

REMARKS

No claims are amended herein. Claims 24-39, 42-47, 70-76, 78-82, 86, 91, 96-99 and 117 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. In particular, the Examiner contends that the specification does not disclose a repeatable process to obtain the microorganism and “it is not apparent if the DNA sequences and/or microorganism are readily available to the public”. The Examiner indicated that if a deposit of the organism was made under the Budapest Treaty, the following would satisfy the requirements of 37 C.F.R. §§ 1.801-1.809.

Attached hereto is a copy of a certificate issued by the American Type Culture Collection” (ATTC) in connection with the deposit of *Pseudomonas fluorescens* TR-97 evidencing the fact that the strain has been deposited under the Budapest Treaty. The deposited strain will irrevocably, and without restriction, be released to the public upon issuance of a patent based on this application. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 24-39, 42-47, 70-76, 78-82, 86, 91, 96-99 and 117 have also been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner contends that the specification does not describe the bacteria used to degrade the essential oil or components thereof. This rejection is traversed. Attention is directed, e.g., to page 18, lines 6-12, of the present specification which plainly states that, “A fluorescent pseudomonad (*Pseudomonas fluorescens* TR97) able to degrade these essential oils has been isolated, indicating that these oils can be metabolized”. See also, e.g., page 9, description of Figs. 8 and 9, and page 15, lines 12-18.

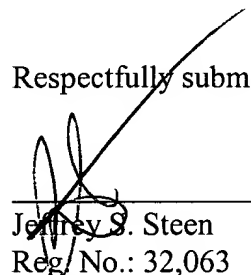
Pseudomonas fluorescens is a common gram negative rod-shaped bacterium. Those skilled in the art are well aware of *Pseudomonas fluorescens* and methods of isolating strains thereof. See, e.g., U.S. Pat. No. 4,751,081, column 12, line 30 et seq., describing well-known procedure of isolating *Pseudomonas fluorescens*. Indeed, no more than routine skill in the art is necessary to isolate such strains. In addition, the attached deposit certificate from the ATCC is proof that applicant has met the requirements of 35 U.S.C. §112. A deposit is not necessary at the time of the filing of the application. See 37 C.F.R. §1.809. The United States

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Amendment dated October 26, 2006
Reply to Office Action of July 27, 2006

Court of Appeals for the Federal Circuit held that the requirements of access by the Office to a sample of the cell line during pendency, and public access after grant, were met by deposit of microorganisms in an authorized depository. The Court further held that the addition of information designating the depository, accession number, and deposit date of the deposited cell line in ATCC after the filing date did not violate the prohibition against new matter in 35 U.S.C. §132. See *In re Lundak*, 773, F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985). Withdrawal of this rejection under 35 U.S.C. §112, first paragraph, is therefore respectfully requested.

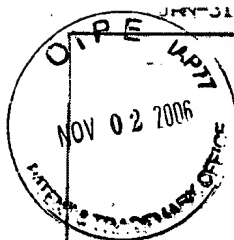
A good faith attempt has been made to place all the claims in the present application in condition for allowance. If there is any point requiring discussion or clarification, the Examiner is respectfully urged to telephone the undersigned attorney for applicant at the below indicated telephone number for resolution.

Respectfully submitted,



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**BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF
THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE**

INTERNATIONAL FORM

**RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3
AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2**

To: (Name and Address of Depositor or Attorney)

Auburn University
Attn: Dr. Sadik Tuzun
209 Life Sciences Building
Auburn, AL 36849

Deposited on Behalf of: Auburn University

Identification Reference by Depositor:
Pseudomonas fluorescens: TR97

Patent Deposit Designation
PTA-3889

The deposit was accompanied by: ☐ a scientific description ☐ a proposed taxonomic description indicated above.

The deposit was received November 29, 2001 by this International Depository Authority and has been accepted.

AT YOUR REQUEST: ☒ We will inform you of requests for the strain for 30 years.

The strain will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strain, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strain.

If the culture should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace it with living culture of the same.

The strain will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the culture cited above was tested December 28, 2001. On that date, the culture was viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:


Tanya Nunnally, Patent Specialist, Patent Depository

Date: January 7, 2002

cc: Guy T. Donatiello
(Ref: Docket or Case No.: 1193-PCT-AU-001)

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TOTAL P. 02

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